

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 616 of 2005****For Approval and Signature:****HON'BLE MR.JUSTICE C.K.BUCH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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DINESH MAGANLAL DAXINI & 3 - Applicant(s)

Versus

S.M. RAO FOOD INSPECTOR & 1 - Respondent(s)

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Appearance :

MR BN LIMBACHIA for Petitioner No(s).: 1,2,3,4.

None for Respondent No(s).: 1.

Mr. NC Sood, Addl. PUBLIC PROSECUTOR for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date : 09/08/2005

ORAL JUDGMENT

1. Heard ld. Counsel Mr. Limbachia for the petitioners. The grievance of the petitioners is that an application given pending the hearing of the criminal appeal filed by

the present petitioners for giving all the accused persons including accused no.4 firm a fresh chance to give explanation, has been wrongly turned down while rejecting said application exh.21 by ld. Addl. Sessions Judge, Ahmedabad (Rural) vide order dated 16.07.2005. It is submitted that as per the scheme of section 281 of CrPC, statement of the accused recorded by the ld. Trial Judge ought to have been verified and signed by him. According to this section, the correct version of the accused has been recorded in presence of the Presiding Judge concerned. In the present case, it was noticed during the course of hearing of the criminal appeal that there is no such formal certificate below the statements of the accused persons recorded under section 313 of CrPC and the signature of the Presiding Judge is also not there. According to ld. Counsel Mr. Limbachia, such a statement can not be considered to be true and correct statement under section 313 of CrPC and, therefore, this procedure requires to be conducted denovo. In absence of such certificate and signature of the Presiding Judge of the court, it is likely to cause prejudice to the petitioners accused. In support of his submission, Mr. Limbachia has placed reliance on the decision in the case of Ramesh Chand v/s State of Himachal Pradesh, 2002 Cri.LJ 3949, wherein in para-7, Himachal Pradesh High

Court observed as under:-

" Section 281 of the new Code provides that every question put to the accused and every answer given by him in his statement under Section 313 of the new code shall be recorded in full by the presiding Judge or under his direction and superintendence by an officer of the Court appointed in this behalf and such record shall, if practicable, be in the language in which the accused is examined or in the alternative in the language of the Court and such record shall be shown or read over to the accused and shall be signed by the accused and the presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and contains a full and true account of the statement made by the accused."

2. It is pertinent to note that in this very para, the HP High court has observed that the object of these provisions is to maintain an accurate and authentic record of the evidence and statement of the accused. The ld. Addl. Sessions Judge, while dealing with the application has considered all relevant aspects and when it is not a matter of dispute that the statement of the

accused persons who have appeared in person and in the capacity of the partners of the firm have been recorded by the ld. Presiding Judge and each question put by the ld. Presiding Judge has been answered by them in the capacity of the partners of the firm and in their individual capacity, contains a full and true account of such statements. No doubt is placed before this Court by the petitioners that such version of the accused persons recorded by the ld. Presiding Judge is not the true and correct version in absence of signature of the ld. Presiding Judge and this can be said to be a mere irregularity in maintaining the record and it can not be said to be in any way prejudicial to the accused. Such signature or signatures can be obtained administratively to complete the formalities.

3. In response to the query raised by the court, ld. Counsel Mr. Limbachia has fairly accepted that he is not aware about the drawing of the proceedings by the trial Court regarding recording of statements under section 313 of CrPC. In absence of any discussion in the order under challenge in this regard, or challenge in the averments made in the present petition, the Court has reason to believe that the proceedings of the criminal case reflected the fact that the statements of the accused

persons on the given date were recorded by the ld. Presiding Judge. The proceedings drawn by the trial court are also found relevant because it is nothing but a mirror of the proceedings which had taken place in the proceedings. It is not the case even before this Court that no such proceedings have been drawn. Scheme of section 272 & 283 lay down procedure of recording of evidence and method of recording of the statement of an accused and they are directory in nature and there is no element of mandamus therein.

4. At this stage, I would like to quote one provisions which is relevant for the purpose i.e. section 463 of CrPC which is as under:-

"Sec.463. Non-compliance with the provisions of section 164 or section 281.-- (1) If any court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that the any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (I of 1872), take

evidence in regard to such non-compliance , and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to courts of appeal, reference and revision."

5. So, in view of above scheme, unless it is satisfactorily proved before the Court that non-compliance has resulted into serious prejudice to the defense of the accused, the provisions of section 281 should not be viewed with different eyes and irregularity normally should not be magnified on an assumption that non-availability of the signature of the Presiding Judge has resulted in the failure in recording of the statement of the accused under section 313 of CrPC which is mandatory.

6. For short, there is no merits in the present Cri. Rev. Application and the same is hereby dismissed. Ld. Sessions Judge, Ahmedabad (Rural) shall see that firstly the record is sent to the ld. Presiding Judge concerned where he is serving and his signature may be obtained administratively to complete the formalities. However, it is clarified that completion of this formality also can

not be viewed with any advantageous way in any manner for the petitioners accused.

Ld. APP Mr. Sood has nothing to add.

(C.K. BUCH, J)

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